

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RONALD JAY BIANCHI,

Petitioner,

v.

KAREN BRUNSON,

Respondent.

Case No. C07-5329 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION DISMISSING
PETITIONER'S HABEAS PETITION WITH
PREJUDICE

The Magistrate Judge recommends this habeas corpus petition be denied and dismissed with prejudice as barred by the statute of limitations, 28 U.S.C. § 2244(d). As detailed by the Magistrate Judge, the one-year statute of limitations has run and the habeas corpus petition is time-barred. Petitioner has filed an objection asserting that the limitations period did not commence to run until the "breach" of the plea agreement.

Petitioner's assertion that he is entitled to relief from the federal habeas corpus statute of limitations contained in the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. 2244(d), is unpersuasive. As set forth by the Magistrate Judge, the Washington appellate court, and the record below, the plea agreement did not contain a promise to never terminate Petitioner's parental rights. Therefore, the Court rejects Petitioner's contention that he could not have discovered the factual predicate for his claim until the state severed his parental rights.

To the extent that the Petitioner is also arguing that the limitations period should be equitably


1 tolled due to the “breach” of the plea agreement, the Court disagrees. Equitable tolling of the
2 AEDPA's statute of limitations “is justified in few cases”, and is permissible only if “extraordinary
3 circumstances beyond a prisoner's control make it impossible to file a petition on time.” Spitsyn v.
4 Moore, 345 F.3d 796 (9th Cir. 2003). As previously noted, the plea agreement contained no such
5 promise that was breached.

6 The petition is time barred.

7 The Court, having reviewed petitioner’s petition for writ of habeas corpus, the Report and
8 Recommendation of Magistrate Judge Karen L. Strombom, objections to the Report and
9 Recommendation, and the remaining record, does hereby find and ORDER:

- 10 (1) The Court adopts the Report and Recommendation;
- 11 (2) Petitioner’s writ of habeas corpus [Dkt. # 1] is **DISMISSED WITH PREJUDICE**;
12 and
- 13 (3) The Clerk is directed to send copies of this Order to Petitioner, counsel for
14 Respondent and to the Hon. Karen L. Strombom.

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16 DATED this 28th day of March, 2008.

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19 FRANKLIN D. BURGESS
20 UNITED STATES DISTRICT JUDGE
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